

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

RONALD PAUL PIEDRA,
Petitioner.

No. 2 CA-CR 2016-0335-PR
Filed December 21, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Pinal County
No. S1100CR201400265
The Honorable Joseph R. Georgini, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

M. Lando Voyles, Pinal County Attorney
By Janina N. Walters, Deputy County Attorney, Florence
Counsel for Respondent

Ronald Paul Piedra, Kingman
In Propria Persona

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MEMORANDUM DECISION

Judge Staring authored the decision of the Court, in which Presiding Judge Howard and Judge Espinosa concurred.

STARING, Judge:

¶1 Ronald Piedra seeks review of the trial court's order denying his successive petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that order unless the court clearly abused its discretion. *State v. Roseberry*, 237 Ariz. 507, ¶ 7, 353 P.3d 847, 848 (2015). Piedra has not met his burden of demonstrating such abuse here.

¶2 In 2014, Piedra pled guilty to child molestation and attempted sexual conduct with a minor; the trial court sentenced him to a twenty-year prison term, to be followed by lifetime probation. He sought post-conviction relief, and appointed counsel filed a notice stating she had reviewed the record but had found no colorable claims. The court denied Piedra's pro se petition for post-conviction relief and his subsequent motion for rehearing, and Piedra did not seek review of those rulings.

¶3 Instead, in July 2016, Piedra filed a successive petition for post-conviction relief claiming he had "discovered" in May that his sentence had been "incorrectly aggravated" because the court had improperly relied on his prior convictions in imposing an aggravated sentence. He asserted his recent discovery of the claim was "due to unavailability of case law" and was "a new issue of material fact." The trial court summarily denied relief, and this petition for review followed.

¶4 On review, Piedra again asserts that his sentence was improperly aggravated and that he has complied with Rule 32.2(b) by providing "sufficient reasons why he should be allowed" to file an untimely petition. In an untimely proceeding like this one, a

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petitioner may only raise claims pursuant to Rule 32.1(e) through (h). Ariz. R. Crim. P. 32.4(a). Additionally, the petitioner must identify the “specific exception and meritorious reasons . . . substantiating the claim,” and “indicat[e] why the claim was not stated in the previous petition or in a timely manner.” Ariz. R. Crim. P. 32.2(b).

¶5 The only exception to the timeliness requirement that Piedra has identified is pursuant to Rule 32.1(e), that “[n]ewly discovered material facts probably exist and such facts probably would have changed the verdict or sentence.” But a claim of newly discovered material facts does not encompass newly discovered legal theories or authority. *See generally State v. Saenz*, 197 Ariz. 487, ¶ 7, 4 P.3d 1030, 1032 (App. 2000) (to establish claim of newly discovered evidence, defendant must show “that the evidence was discovered after trial although it existed before trial; that it could not have been discovered and produced at trial through reasonable diligence; that it is neither cumulative nor impeaching; that it is material; and that it probably would have changed the verdict”).

¶6 Because Piedra did not identify any claim capable of being raised in an untimely proceeding, the trial court did not err in summarily denying his most-recent petition for post-conviction relief. Accordingly, we grant review but deny relief.